

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
) Case No. 1:15-CR-00033-3
) (RJA) (HBS)
Plaintiff,)
)
vs.) September 14th, 2022
) 10:06 a.m.
RODERICK ARRINGTON,)
)
Defendant.)

**TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: TRINI E. ROSS, ESQ.
UNITED STATES ATTORNEY
BY: JEREMIAH LENIHAN, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: RODERICK ARRINGTON, PRO SE

Stand-by counsel: MARK A. FOTI, ESQ.
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Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson US Courthouse
2 Niagara Square
Buffalo, NY 14202
(716) 364-6449

Other appearances: WILLIAM POWERS
Director of Information Technology

10:06AM 1 (The witness was sworn at 10:06 a.m.)

10:06AM 2 THE CLERK: Please state your name and spell it for
10:06AM 3 the record.

10:06AM 4 THE WITNESS: William Scott, S-C-O-T-T.

10:06AM 5 THE COURT: All right. Mr. Lenihan?

10:06AM 6 MR. LENIHAN: Thank you, Your Honor.

10:06AM 7

10:06AM 8 DIRECT EXAMINATION

10:06AM 9

10:06AM 10 BY MR. LENIHAN:

10:06AM 11 Q. Mr. Scott, how are you doing this morning?

10:06AM 12 A. Very well, sir.

10:06AM 13 Q. What do you do for a living?

10:06AM 14 A. Currently, I'm a court security officer the federal
10:06AM 15 courthouse here in Buffalo.

10:07AM 16 Q. How long have you been a court security officer?

10:07AM 17 A. A little over eight years now.

10:07AM 18 Q. Prior to being a court security officer, what was your
10:07AM 19 experience?

10:07AM 20 A. I was a deputy sheriff in Genesee County for 37 years.

10:07AM 21 Q. And, as being a court security officer, can you just
10:07AM 22 generally describe what your duties entail?

10:07AM 23 A. We maintain security for the building both inside and
10:07AM 24 outside. Inside courtrooms, we maintain certain equipment as
10:07AM 25 well. At the front doors, particularly, there's a

10:07AM 1 magnetometer station and x-ray station and we monitor all
10:07AM 2 entering persons into the building for security purposes as
10:07AM 3 well as there's a back entrance for deliveries that we
10:07AM 4 maintain also.

10:07AM 5 Q. When court is in session, and a district court judge is
10:07AM 6 on the bench or a magistrate court is on the bench, in your
10:07AM 7 experience, are court security officers present?

10:07AM 8 A. Yes.

10:07AM 9 Q. Why are court security officers present?

10:07AM 10 A. To maintain decorum in courtroom, provide security as
10:08AM 11 needed for the judge and all participants within courtroom.

10:08AM 12 Q. Within your eight years, have you participated in being a
10:08AM 13 court security officer in courtrooms?

10:08AM 14 A. Yes.

10:08AM 15 Q. For both hearings and trials?

10:08AM 16 A. Yes.

10:08AM 17 Q. Have you been assigned to be the court security officer
10:08AM 18 for this trial here?

10:08AM 19 A. Yes.

10:08AM 20 Q. How long have you been in this courtroom for this trial
10:08AM 21 with US v. Roderick Arrington?

10:08AM 22 A. Since the beginning of the trial and for other
10:08AM 23 proceedings prior to it.

10:08AM 24 Q. You remember that jury selection happened approximately a
10:08AM 25 week ago?

10:08AM 1 A. Yes.

10:08AM 2 Q. And have you been here every day from jury selection up

10:08AM 3 until today?

10:08AM 4 A. I have.

10:08AM 5 Q. As part of being a court security officer, do you have

10:08AM 6 the opportunity to -- yeah. Your job is to protect the

10:08AM 7 security of the courtroom?

10:08AM 8 A. Yes.

10:08AM 9 Q. And what does that include?

10:09AM 10 A. I lock and unlock the doors. I'm the first person in

10:09AM 11 this courtroom in the morning and usually the last one out.

10:09AM 12 Upon entering in the morning, I sweep the whole courtroom,

10:09AM 13 making sure that it's safe, no one left anything behind or

10:09AM 14 nothing in the courtroom that shouldn't be here. I unlock

10:09AM 15 the doors, greet people as they come in, seat them if they

10:09AM 16 need to be seated somewhere in particular, and I take care of

10:09AM 17 the jury during the trial.

10:09AM 18 Q. Yesterday, were you here when a woman by the name of

10:09AM 19 Jessica Kazukiewicz was testifying?

10:09AM 20 A. I was.

10:09AM 21 Q. And what do you remember about her testimony -- strike

10:09AM 22 that.

10:09AM 23 At a certain point, do you remember that Judge Arcara had

10:09AM 24 asked to take a break for Ms. Kazukiewicz to read her Grand

10:09AM 25 Jury testimony?

10:09AM 1 A. Yes.

10:09AM 2 Q. Once that happened, can you discuss what observations you
10:09AM 3 made?

10:09AM 4 A. I came up from the back of the courtroom to escort the
10:10AM 5 jury out during that break. The Judge had already had
10:10AM 6 excused himself from the bench. I came back out from the
10:10AM 7 jury room, and stood here for a few moments. I witnessed
10:10AM 8 that the two deputy marshals had escorted Mr. Arrington to
10:10AM 9 the back room, at which point, the -- Ms. Kazukiewicz was
10:10AM 10 still up here on the witness stand reviewing that statement.
10:10AM 11 I took the opportunity to go out the back exit to go wash my
10:10AM 12 hands.

10:10AM 13 Upon my re-entering about 30, 45 seconds later, I was
10:10AM 14 approached by you at the glass doors in the back of the
10:10AM 15 courtroom that an incident had occurred or was occurring in
10:10AM 16 courtroom. I entered courtroom. I'm not sure if it was you
10:10AM 17 or your co-counsel advised me that there was some slight
10:10AM 18 interaction between the witness, who was still on the stand
10:10AM 19 here, and some party members in the back of the courtroom.

10:10AM 20 I came up and made the decision that perhaps, with what I
10:11AM 21 had learned, the interaction being some staring back and forth
10:11AM 22 I was told, because of that, I wanted to, again, maintain the
10:11AM 23 decorum in the courtroom. I made the decision to remove the
10:11AM 24 witness from the stand because, at that point in time, I had
10:11AM 25 noticed that she had already taken the papers that she was

10:11AM 1 reviewing and set them off to the side, clueing into me that
10:11AM 2 she was done. So, I escorted her down from the witness stand
10:11AM 3 out to the back of the courtroom to the glass doors where I
10:11AM 4 handed her off to the agent who was in charge of bringing the
10:11AM 5 witnesses in and out. She, in turn, took custody of her, and
10:11AM 6 put her in one of the attorney/client rooms outside.

10:11AM 7 Q. And that was an FBI agent you handed the --

10:11AM 8 Ms. Kazukiewicz off to?

10:11AM 9 A. Correct.

10:11AM 10 Q. What observations did you make after you handed off

10:11AM 11 Ms. Kazukiewicz to an FBI agent?

10:11AM 12 A. I came back into courtroom, again, to maintain the
10:11AM 13 decorum, make sure nothing else was going to happen between
10:12AM 14 anybody else. There were very few people in the courtroom.

10:12AM 15 The attorneys were in here, a few family of members

10:12AM 16 Mr. Arrington's, a few other agents, I believe, sitting off
10:12AM 17 to the side, and everything had calmed down to that point.

10:12AM 18 Q. Did you see Ms. Kazukiewicz being escorted into a [sic]
10:12AM 19 attorney/client conference room outside the courtroom?

10:12AM 20 A. I did not.

10:12AM 21 Q. Did you have any interaction with Ms. Kazukiewicz after
10:12AM 22 that?

10:12AM 23 A. No.

10:12AM 24 Q. Was Ms. Kazukiewicz called back to the witness stand?

10:12AM 25 A. She was.

10:12AM 1 Q. Were you part of bringing her back to the witness stand?

10:12AM 2 A. No.

10:12AM 3 Q. Were you in the courtroom when she was brought to the
10:12AM 4 witness stand?

10:12AM 5 A. I was. I held the door open for her, the swinging doors,
10:12AM 6 and that was my interaction.

10:12AM 7 Q. And just so -- for purpose of record, if you can describe
10:12AM 8 where the person would enter and exit courtroom and where
10:12AM 9 those attorney/client doors are in relation to the entrance
10:13AM 10 and exit?

10:13AM 11 A. Entering the courtroom for anyone other than judicial
10:13AM 12 personnel are through the back doors. There's a set of
10:13AM 13 wooden doors and outer glass doors. That's the only way for
10:13AM 14 the public and attorneys to enter courtroom. Outside,
10:13AM 15 there's a long hallway that services two courtrooms, a couple
10:13AM 16 of restrooms, and three attorney/client rooms. There are
10:13AM 17 three of them outside in the long hallway.

10:13AM 18 Q. With your interactions with Ms. Kazukiewicz, did you
10:13AM 19 witness anything inappropriate?

10:13AM 20 A. No.

10:13AM 21 MR. LENIHAN: No further questions, Your Honor.

10:13AM 22 THE COURT: All right. Mr. Arrington?

23

24

25

CROSS-EXAMINATION

BY THE DEFENDANT:

Q. How are you doing, Mr. Scott?

A. Good.

Q. I never had an issue with you, and I'm not saying you did anything wrong, sir, but you was here when the Judge recessed for ten minutes, correct, for her to refresh her recollection?

A. Regarding this incident, yes.

Q. Yes. Okay. From your experience, when a judge recess for ten minutes and leave a witness on the stand to refresh they recollection, do the prosecution -- supposed to escort that witness off the stand before the judge come back during cross-examining? Do the prosecutor -- supposed to escort her to be taken out to a conference room or anything since your whole time you've been working in this courthouse?

A. No.

Q. You ever see that happen before?

A. Not normally. No.

Q. Okay. And if the judge wanted to excuse that witness before he recessed, he would have had that witness excused, correct?

A. Correct.

Q. Okay. So, when you left courtroom for a couple seconds,

10:14AM 1 you never witnessed this interaction with the witness and one
10:14AM 2 of my family members, correct?

10:15AM 3 A. I did not.

10:15AM 4 Q. Okay. So, when you came back, the government approached
10:15AM 5 you and said an interaction happened, correct?

10:15AM 6 A. That's correct.

10:15AM 7 Q. So, they asked for her to be escorted off the witness
10:15AM 8 stand, correct? They asked -- the government asked you to
10:15AM 9 escort her back to a room off the witness stand?

10:15AM 10 A. No.

10:15AM 11 Q. You just --

10:15AM 12 A. I made that decision.

10:15AM 13 Q. Okay. You made that decision?

10:15AM 14 A. Yes.

10:15AM 15 Q. Okay. So, when you escorted her off the witness stand,
10:15AM 16 when you made that decision, you handed her off to an FBI
10:15AM 17 agent that handles witnesses, correct?

10:15AM 18 A. Yes.

10:15AM 19 Q. Okay. So, when you left, you don't know what took place
10:15AM 20 or what room -- you said they took her into a room. The FBI
10:15AM 21 agents took her to a room?

10:15AM 22 A. Correct.

10:15AM 23 Q. Outside of here?

10:15AM 24 A. Correct.

10:15AM 25 Q. Is there cameras out there that will show her going in

10:15AM 1 this room by herself and nobody going in there with her?

10:15AM 2 A. I would need --

10:16AM 3 Q. Or if somebody did go in there with her, the cameras will
10:16AM 4 show that, correct?

10:16AM 5 A. Correct.

10:16AM 6 Q. Okay. And you never stood out there. So, you can't say
10:16AM 7 if somebody went in there because you came back into the
10:16AM 8 courtroom, correct?

10:16AM 9 A. That's correct.

10:16AM 10 Q. Okay. So, you don't have no idea if anybody went in
10:16AM 11 there and talked to her or went in that room while she was
10:16AM 12 sitting in the room for, like, what, 40 minutes I would say,
10:16AM 13 the whole time the Judge was in the chambers?

10:16AM 14 A. No. It wasn't that long. It might have been 15, 20
10:16AM 15 minutes at the most.

10:16AM 16 Q. Because I was in the back for, like, 15 minutes and I
10:16AM 17 came out here and I sat for, like, 20 minutes. So, if we get
10:16AM 18 those -- if the judge subpoena those cameras, it will show if
10:16AM 19 somebody went in the room and talked to Jessica, correct, or
10:16AM 20 just went in the room, correct?

10:16AM 21 A. Correct.

10:16AM 22 THE DEFENDANT: No further questions, Your Honor.

10:16AM 23 MR. LENIHAN: No redirect.

10:17AM 24 THE COURT: All right. Thank you, Mr. Scott.

10:17AM 25 (The witness was excused at 10:17 a.m.)

10:17AM 1 THE COURT: Who is the FBI agent?

10:17AM 2 MR. LENIHAN: I believe it's Husen Ali. We can have

10:17AM 3 her testify.

10:17AM 4 THE COURT: Put her on the stand. I'll lake a five-

10:17AM 5 minute break.

10:17AM 6 MR. LENIHAN: Sure.

10:17AM 7 THE COURT: And Mr. Arrington will be able to cross-

10:17AM 8 examine her.

10:17AM 9 MR. LENIHAN: Yes.

10:17AM 10 THE CLERK: All rise.

10:21AM 11 (A recess was taken from 10:17 a.m. to 10:21 a.m.)

10:21AM 12 THE CLERK: All rise. You may be seated.

10:21AM 13 THE COURT: All right. Mr. Lenihan?

10:25AM 14 MR. LENIHAN: Thank you, Your Honor. The government

10:25AM 15 would call Husen Ali.

10:25AM 16 (The witness was sworn at 10:25 a.m.)

10:25AM 17 THE CLERK: Please state your name and spell it for

10:25AM 18 the record.

10:25AM 19 THE WITNESS: Husen Ali, H-U-S-E-N, A-L-I.

10:25AM 20

10:25AM 21 DIRECT EXAMINATION

10:25AM 22

10:25AM 23 BY MR. LENIHAN:

10:25AM 24 Q. Good morning, ma'am.

10:25AM 25 A. Good morning.

10:25AM 1 Q. What do you do for a living?

10:25AM 2 A. I'm a special agent with the FBI.

10:25AM 3 Q. How long have been a special agent with the FBI?

10:25AM 4 A. A little over a year and a half now.

10:25AM 5 Q. And where are you assigned right now?

10:25AM 6 A. I'm assigned to the Safe Streets Task Force.

10:26AM 7 Q. What is the Safe Streets Task Force?

10:26AM 8 A. We investigate gangs, drug trafficking, sex trafficking,

10:26AM 9 and illegally-posessed firearms.

10:26AM 10 Q. Have you had the opportunity to help in preparation for

10:26AM 11 the trial that we're here today on, United States v. Roderick

10:26AM 12 Arrington?

10:26AM 13 A. I have.

10:26AM 14 Q. Have you been at -- in court to help facilitate trial

10:26AM 15 preparation?

10:26AM 16 A. Yes.

10:26AM 17 Q. Were you in court yesterday on September 13th, 2022?

10:26AM 18 A. Yes.

10:26AM 19 Q. Do you remember a woman by the name of Jessica

10:26AM 20 Kazukiewicz testifying?

10:26AM 21 A. I do.

10:26AM 22 Q. Do you remember if there was -- during her testimony, if

10:26AM 23 there had -- it had been decided that a break would be taken

10:26AM 24 by the Court?

10:26AM 25 A. Yes.

10:26AM 1 Q. Once the break occurred, can you describe what you
10:26AM 2 observed?

10:26AM 3 A. She seemed to get upset that someone was staring at her
10:26AM 4 from Mr. Arrington's side of the family, and then the court
10:27AM 5 security officer made a decision to escort her out the room.

10:27AM 6 Q. Where were you at this point? Were you in courtroom?

10:27AM 7 A. I was in courtroom.

10:27AM 8 Q. Were you in the front of the courtroom or towards the
10:27AM 9 back of the courtroom?

10:27AM 10 A. I was sitting in the back of the courtroom.

10:27AM 11 Q. What happened after you saw the court security officer?

10:27AM 12 A. I stood up because I knew she was going to be escorted
10:27AM 13 once he made that decision, and I escorted her out of the
10:27AM 14 courtroom.

10:27AM 15 Q. Did the court security officer bring Ms. Kazukiewicz to
10:27AM 16 you?

10:27AM 17 A. Yes, he did.

10:27AM 18 Q. Where did you escort her to?

10:27AM 19 A. The first set of double doors and then through the glass
10:27AM 20 doors.

10:27AM 21 Q. And that would be to exit courtroom?

10:27AM 22 A. Yes.

10:27AM 23 Q. What happened next?

10:27AM 24 A. I walked her out. And, on her left side, there are rooms
10:27AM 25 for -- conference rooms open where witnesses had been staying

10:27AM 1 since the court started, and I put her in one of the rooms.

10:27AM 2 Q. What did you do prior to putting Ms. Kazukiewicz in the

10:27AM 3 room?

10:27AM 4 A. I walked her out, opened the door, let her into the room

10:27AM 5 and closed the door.

10:27AM 6 Q. Was anyone else inside the room?

10:27AM 7 A. Not when I put her in there, no.

10:28AM 8 Q. What do you do next?

10:28AM 9 A. I walked back into courtroom.

10:28AM 10 Q. At any time, how long was your interaction with

10:28AM 11 Ms. Kazukiewicz at that point?

10:28AM 12 A. Maybe a minute or so.

10:28AM 13 Q. At any time, did you talk to her about her testimony?

10:28AM 14 A. No, I did not.

10:28AM 15 Q. Did you suggest that she should identify Mr. Arrington at

10:28AM 16 all?

10:28AM 17 A. No.

10:28AM 18 MR. LENIHAN: No further questions.

10:28AM 19 THE COURT: Mr. Arrington?

10:28AM 20

10:28AM 21 CROSS-EXAMINATION

10:28AM 22

10:28AM 23 BY THE DEFENDANT:

10:28AM 24 Q. How are you doing, miss?

10:28AM 25 A. Good.

10:28AM 1 Q. You said you was here the whole time, and you seen the
10:28AM 2 interaction with Jessica and one of my family members?

10:28AM 3 A. I heard it. Yes.

10:28AM 4 Q. What happened? What took place?

10:28AM 5 A. She got upset, said that someone from your side of the
10:28AM 6 family was staring at her.

10:28AM 7 Q. Staring at her?

10:28AM 8 A. Yes.

10:28AM 9 Q. Okay. Was that enough to remove her off the stand?

10:28AM 10 A. That's not my decision to make.

10:28AM 11 Q. Okay. So, once you took her to this room, you took
10:29AM 12 her -- you walked her inside the room, or you just took her
10:29AM 13 to the door, and she just went in the room herself, and you
10:29AM 14 closed the door?

10:29AM 15 A. I walked her out, opened the door, watched her walk into
10:29AM 16 the room, closed the door, and walked away.

10:29AM 17 Q. You never went in there not once?

10:29AM 18 A. No.

10:29AM 19 Q. Did you stay at the door the whole time and make sure
10:29AM 20 nobody went in the room or you came back in here?

10:29AM 21 A. I walked back into courtroom.

10:29AM 22 Q. So, you don't know if somebody else went in the room with
10:29AM 23 her while you was in there, correct?

10:29AM 24 A. I did not see anyone.

10:29AM 25 Q. And you never went into the room?

10:29AM 1 A. I did not.

10:29AM 2 Q. Okay. So, if we get the cameras, the camera is going to
10:29AM 3 see that nobody went in that room after you escorted her in
10:29AM 4 there and you came here?

10:29AM 5 A. I was not there.

10:29AM 6 MR. LENIHAN: She doesn't know that.

10:29AM 7 THE DEFENDANT: Okay. No further questions.

10:29AM 8 THE COURT: All right. Thank you, ma'am.

10:29AM 9 (The witness was excused at 10:29 a.m.)

10:29AM 10 THE COURT: All right. We're trying to get the
10:29AM 11 video. Should have it, I guess, some time in a few -- I don't
10:29AM 12 want to say a few minutes, maybe 15, 20 minutes, half hour.
10:30AM 13 So, stay in courtroom or stay available. You can go outside
10:30AM 14 if you want. Just so when it's ready to go, we got to set it
10:30AM 15 up in here, and I don't think anybody has seen the video.
10:30AM 16 We'll show it for the first time in the courtroom.

10:30AM 17 MR. LENIHAN: Yes. And there is another special
10:30AM 18 agent that could discuss being --

10:30AM 19 THE COURT: Ma'am, you're excused.

10:30AM 20 THE WITNESS: Oh.

10:30AM 21 MR. LENIHAN: There is another special agent that can
10:30AM 22 discuss being with Ms. Kazukiewicz --

10:30AM 23 THE COURT: There is another special agent?

10:30AM 24 MR. LENIHAN: -- during this 15, 20-minute window.

10:30AM 25 THE COURT: Do you have the person here?

10:30AM 1 MR. LENIHAN: The person is here.

10:30AM 2 THE COURT: You ready to put them on the stand?

10:30AM 3 MR. LENIHAN: We can put them on the stand.

10:30AM 4 THE COURT: All right. Let's do that.

10:30AM 5 THE DEFENDANT: That person went in the room? He was

10:30AM 6 in the room with her?

10:30AM 7 MR. LENIHAN: It's going to be Special Agent Robert

10:30AM 8 Colunga.

10:30AM 9 THE COURT: Okay.

10:31AM 10 THE DEFENDANT: I'm sorry for laughing, Your Honor.

10:31AM 11 I want to bring something to your attention, too, also.

10:31AM 12 THE COURT: Mr. Arrington, I don't want to have a

10:31AM 13 conversation with you. If you have something to say, let me

10:31AM 14 know, and I'll listen.

10:31AM 15 (The witness was sworn at 10:31 a.m.)

10:31AM 16 THE CLERK: State your name and spell it for the

10:31AM 17 record.

10:31AM 18 THE WITNESS: Robert Colunga, R-O-B-E-R-T,

10:31AM 19 C-O-L-U-N-G-A.

10:31AM 20 MR. LENIHAN: Permission to proceed?

21 THE COURT: Yes.

22

23

24

25

1 DIRECT EXAMINATION

2

3 BY MR. LENIHAN:

4 Q. Good morning, sir.

5 A. Good morning.

10:31AM 6 Q. Where do you work?

10:31AM 7 A. I work for the FBI.

10:31AM 8 Q. What is your capacity with the FBI?

10:31AM 9 A. I'm sorry?

10:31AM 10 Q. What is -- in what capacity?

10:31AM 11 A. I work on Safe Streets. I work violent -- gangs, and
10:31AM 12 drugs, and violent crime.

10:31AM 13 Q. Are you a special agent?

10:31AM 14 A. Yes, sir.

10:31AM 15 Q. How long have you been a special agent with the FBI?

10:31AM 16 A. Since July of 2019.

10:32AM 17 Q. Prior to July of 2019, did you have any other law
10:32AM 18 enforcement experience?

10:32AM 19 A. Yes. I was a police officer with the FBI in the uniform
10:32AM 20 division.

10:32AM 21 Q. Where was that?

10:32AM 22 A. Quantico, Virginia.

10:32AM 23 Q. When did you start that position?

10:32AM 24 A. Somewhere around June of 2014.

10:32AM 25 Q. When you were assigned, when you became an FBI agent in

10:32AM 1 2019, what unit -- what field office were you assigned to?

10:32AM 2 A. Buffalo.

10:32AM 3 Q. Have you been helping with the trial preparation in the

10:32AM 4 trial of United States v. Roderick Arrington?

10:32AM 5 A. Yes, sir.

10:32AM 6 Q. And in that trial preparation, are you helping with,

10:32AM 7 like, getting evidence to the courtroom?

10:32AM 8 A. Yes.

10:32AM 9 Q. I want to draw your attention to yesterday, September

10:32AM 10 13th of 2022. Were you present at the courthouse?

10:32AM 11 A. Yes, sir.

10:32AM 12 Q. Were you inside the courtroom during any testimony?

10:32AM 13 A. No, sir.

10:33AM 14 Q. Why not?

10:33AM 15 A. It's my understanding I'm supposed to testify later on in

10:33AM 16 this trial, and I was advised not to be inside the courtroom.

10:33AM 17 Q. Because there was a sequestration order?

10:33AM 18 A. I believe so, yes.

10:33AM 19 Q. Did you see any testimony of Jessica Kazukiewicz

10:33AM 20 yesterday?

10:33AM 21 A. No.

10:33AM 22 Q. Are you aware that Ms. Kazukiewicz was present at the

10:33AM 23 courthouse to testify yesterday afternoon?

10:33AM 24 A. Yes.

10:33AM 25 Q. And where were you -- do you remember there being a

10:33AM 1 recess that the Court had taken in the afternoon?

10:33AM 2 A. Yes.

10:33AM 3 Q. And describe what observations you made after the Court

10:33AM 4 took the recess in the -- yeah. So, where were you when the

10:33AM 5 Court was taking the recess?

10:33AM 6 A. I was in this hallway right outside these doors.

10:33AM 7 Q. So, you were outside the courtroom doors?

10:33AM 8 A. Correct. Not, like, immediately outside the doors, but

10:33AM 9 further down to the left.

10:33AM 10 Q. What observations did you make when the Court took the

10:34AM 11 recess?

10:34AM 12 A. Just people walking around, and saw Jessica, but that's

10:34AM 13 pretty much it.

10:34AM 14 Q. Where did you see Jessica go?

10:34AM 15 A. I believe, at one time, she went to the bathroom, and she

10:34AM 16 went into one of the rooms off to the side. That's it.

10:34AM 17 Q. Where -- she was in a room?

10:34AM 18 A. Yes.

10:34AM 19 Q. Where is the bathroom in relation to where that room is?

10:34AM 20 A. The bathroom is to the left of that room.

10:34AM 21 Q. Did you go to the bathroom or in -- where did you go when

10:34AM 22 Ms. Kazukiewicz went to the bathroom?

10:34AM 23 A. I walked a little bit behind her, or maybe I was in

10:34AM 24 front, I don't remember, but I was walking with her. And

10:34AM 25 when she went to the bathroom, I stood outside the -- in the

10:34AM 1 main hallway where everyone is.

10:34AM 2 Q. What was the point of walking or sort of escorting her to
10:34AM 3 the bathroom?

10:34AM 4 A. Just to stay with her and make sure no one would talk to
10:35AM 5 her or tamper with her.

10:35AM 6 Q. To protect her as well?

10:35AM 7 A. Correct.

10:35AM 8 Q. After Ms. Kazukiewicz went to the bathroom, what happened
10:35AM 9 next? Did she exit the bathroom at one point?

10:35AM 10 A. I knew she went to the bathroom. There was one time
10:35AM 11 where we sat inside the room. I believe there were one or
10:35AM 12 two recesses. And then, another time, we sat outside on the
10:35AM 13 bench in the main area.

10:35AM 14 Q. Did you have any interaction with Ms. Kazukiewicz
10:35AM 15 while -- and, for purpose of the record, can you describe
10:35AM 16 what the bench looks like in the hallway?

10:35AM 17 A. I believe it's, like, a brownish color, just like a flat,
10:35AM 18 regular bench. It's right out on the left-hand side in this
10:35AM 19 hallway.

10:35AM 20 Q. You mentioned that Ms. Kazukiewicz went to sit down on a
10:35AM 21 bench?

10:35AM 22 A. I asked her if she wanted to go back inside the room, and
10:35AM 23 she stated that she did not want to go back inside the room,
10:36AM 24 that she does not want to be scared -- she does not want to
10:36AM 25 go back in the room. She does not want to be scared anymore.

10:36AM 1 She wants to sit on the bench in front of everyone.

10:36AM 2 Q. Did Ms. Kazukiewicz sit down on the bench?

10:36AM 3 A. I don't remember if she sat on the bench or if she sat on

10:36AM 4 her walker next to the bench.

10:36AM 5 Q. Where were you in relation to Ms. Kazukiewicz?

10:36AM 6 A. To her left on the bench.

10:36AM 7 Q. Did you have any conversation with her?

10:36AM 8 A. I think it was small conversation just about the rain.

10:36AM 9 It was raining outside. I remember telling her that I have a

10:36AM 10 weather app on my phone.

10:36AM 11 Q. Anything else? Any other conversation?

10:36AM 12 A. She seemed distraught and upset. I didn't get into

10:36AM 13 specifics with her about it because I want to maintain the

10:36AM 14 integrity of the case. I just told her to breathe, and tell

10:36AM 15 the truth, and that's it.

10:36AM 16 Q. Did you ever suggest to her that she should identify

10:36AM 17 Roderick Arrington?

10:37AM 18 A. No.

10:37AM 19 Q. Did you ever suggest to her that she should identify

10:37AM 20 anyone in courtroom?

10:37AM 21 A. No.

10:37AM 22 Q. How long was, to the best that you can remember, Jessica

10:37AM 23 sitting on the bench in the hallway?

10:37AM 24 A. About ten minutes or so.

10:37AM 25 Q. And you were next to her the entire time?

10:37AM 1 A. If not the entire time, 95 to 100 percent of the time.

10:37AM 2 Q. What was the purpose of being next to her the 95 to 100
10:37AM 3 percent of the time?

10:37AM 4 A. Same as when I escorted her to the bathroom, just to make
10:37AM 5 sure she was with somebody, that she wasn't alone, that she
10:37AM 6 was protected, and that no one would talk to her or tamper
10:37AM 7 with her.

10:37AM 8 Q. Do you remember a time when she got -- when she was
10:37AM 9 called back to the witness stand?

10:37AM 10 A. I do.

10:37AM 11 Q. And can you discuss what you remember about that?

10:37AM 12 A. I just remember she had got up. She walked towards the
10:38AM 13 court doors. I don't remember who was with her, but I did
10:38AM 14 not walk with her.

10:38AM 15 Q. And you didn't suggest that she should identify the
10:38AM 16 defendant. Did you see anyone suggest to her that she should
10:38AM 17 identify the defendant?

10:38AM 18 A. No.

10:38AM 19 Q. Did you see anyone suggest to her that she should
10:38AM 20 identify anybody as committing a crime?

10:38AM 21 A. No.

10:38AM 22 MR. LENIHAN: No further questions.

10:38AM 23 THE COURT: All right. Mr. Arrington?

10:38AM 24 THE DEFENDANT: Yes.

10:38AM 25

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CROSS-EXAMINATION

BY THE DEFENDANT:

Q. Mr. Colunga, you testified at one of my hearings, correct, involving the illegal search and seizure of my cell at the jail I was in, Cattaraugus County, right?

A. Yes, sir.

Q. And you testified and said that you wasn't investigating me for this case, or you wasn't involved in the investigation of this case, correct?

A. I wasn't investigating in the case, correct.

Q. Right. But you was investigating me for another case, correct?

A. No, sir. I was just helping out with the case.

Q. When you came and got my DNA?

A. Yes.

Q. When you filed that warrant application for my DNA for the Michael Payne case?

A. I don't remember who the person was, but, yes, for the DNA.

Q. But it states in that warrant application that you was the investigating special agent.

A. Investigating special agent for the search warrant.

Q. For the search warrant. But you conducted that search, came and got my DNA, correct?

10:39AM 1 A. Correct.

10:39AM 2 Q. And Assistant United States Attorney Tripi sent you to
10:39AM 3 come get that DNA, correct?

10:39AM 4 A. Yes.

10:39AM 5 Q. For that case, correct?

10:39AM 6 A. Correct.

10:39AM 7 Q. And that warrant application never said for comparison
10:40AM 8 for acquitted conduct, correct?

10:40AM 9 A. I'd have to be refreshed with the search warrant
10:40AM 10 application.

10:40AM 11 MR. LENIHAN: Objection. Relevance.

10:40AM 12 THE COURT: Sustained.

10:40AM 13 THE DEFENDANT: The relevance is he's an experienced
10:40AM 14 special agent and this is a trial going on. And when a
10:40AM 15 witness --

10:40AM 16 THE COURT: Has nothing to do with the issue that
10:40AM 17 we're now facing.

10:40AM 18 BY THE DEFENDANT:

10:40AM 19 Q. From your experience, when a witness is testifying --

10:40AM 20 THE COURT: I think I sustained the objection. You
10:40AM 21 want to keep talking, go ahead.

10:40AM 22 THE DEFENDANT: No, this is for -- I'm rephrasing the
10:40AM 23 question, Your Honor.

10:40AM 24 THE COURT: All right. I'm sorry.

10:40AM 25

10:40AM 1 BY THE DEFENDANT:

10:40AM 2 Q. From your experience, as a special agent, when a trial is
10:40AM 3 going on, and a witness is on the stand, and they testifying,
10:40AM 4 in the middle of they testimony, the judge recessed so she
10:40AM 5 can refresh her recollection. As it -- being a special
10:40AM 6 agent, or helping the United States Attorneys by you
10:41AM 7 assisting getting evidence to bring to courtroom or assisting
10:41AM 8 bringing stuff over here, you was not supposed to have any
10:41AM 9 contact with the witness, correct?

10:41AM 10 A. That's incorrect. No one had told me I could not have
10:41AM 11 any contact with her.

10:41AM 12 Q. But, from your experience, if the witness is in a
10:41AM 13 courtroom testifying against the defendant that you're
10:41AM 14 investigating, you should not have any type of contact or any
10:41AM 15 conversations with her without anybody being around, correct?

10:41AM 16 A. Pertinent information to -- regarding the case, that
10:41AM 17 would be correct. There was --

10:41AM 18 Q. But we don't know what that conversation was. Only you
10:41AM 19 and her know the conversation was. But you wasn't even
10:41AM 20 supposed to be talking to her. She was supposed to be
10:41AM 21 secured in a room, but you stalked her to the bathroom,
10:41AM 22 waited for her to come out, and say you protecting her when
10:41AM 23 we got cameras here. She don't need your protection,
10:41AM 24 correct?

10:41AM 25 MR. LENIHAN: Objection.

10:41AM 1 THE DEFENDANT: This is why --

10:41AM 2 THE REPORTER: Hold on. He objected. Don't talk

10:42AM 3 over.

10:42AM 4 THE COURT: Did you finish the question?

10:42AM 5 THE REPORTER: Mr. Lenihan objected.

10:42AM 6 THE COURT: Mr. Lenihan?

10:42AM 7 MR. LENIHAN: He's testifying. He's using the phrase

10:42AM 8 stalking. There's no evidence of any stalking.

10:42AM 9 THE COURT: You're objecting?

10:42AM 10 MR. LENIHAN: Yes.

10:42AM 11 THE COURT: Sustained.

10:42AM 12 THE DEFENDANT: I can finish, Your Honor?

10:42AM 13 THE COURT: Yes.

10:42AM 14 BY THE DEFENDANT:

10:42AM 15 Q. If the court officer escorted Jessica to a room so she

10:42AM 16 could be secured because she's a testifying witness, and

10:43AM 17 she's in the middle of her testimony, you was not supposed to

10:43AM 18 have contact with that witness, correct?

10:43AM 19 A. That's incorrect. I was never told I could not have

10:43AM 20 contact with her.

10:43AM 21 Q. But, you being a special agent, you being experienced,

10:43AM 22 you been doing this for years, you have knowledge to know not

10:43AM 23 to talk to a witness during their testimony at a trial when

10:43AM 24 she's being secured in a room, correct?

10:43AM 25 A. Contained to pertinent information, that's correct.

10:43AM 1 Q. Okay. But nobody know what was said between y'all but
10:43AM 2 you and her, correct?

10:43AM 3 A. I guess that's true.

10:43AM 4 Q. Okay. And you also went by one of my witness's houses --
10:43AM 5 one of my alibi witnesses houses -- a couple days ago
10:43AM 6 involving -- I don't understand. Like, you say you got a
10:43AM 7 special agent in this case, but you pops up everywhere
10:44AM 8 involving my witnesses or witness testifying.

10:44AM 9 What is -- is you put on this case specifically to
10:44AM 10 investigate me, trying to get evidence during trial, or stop
10:44AM 11 certain evidence from coming into my trial? Because,
10:44AM 12 yesterday, you was involved in a witness supposedly being
10:44AM 13 secured. And here it is, you testifying.

10:44AM 14 But before you testify, the AUSA Lenihan lied to the Judge
10:44AM 15 and said nobody had contact with this woman. And here it is,
10:44AM 16 we have you sitting here saying that you watched her go to the
10:44AM 17 bathroom, and you started a conversation with her. And you
10:44AM 18 was protecting her.

10:44AM 19 Was -- something happened yesterday, and she was supposed
10:44AM 20 to be secured in a room. Did you tell her to say certain
10:44AM 21 things or scare her, threaten her, to say certain things?
10:44AM 22 Because you only one that had contact with her when she was
10:45AM 23 supposed to be secured in the room. Did you tell Ms. Jessica
10:45AM 24 anything when you wasn't supposed to have contact with her?
10:45AM 25 Did you say anything to her about her testimony or she was

10:45AM 1 supposed to be testifying about? Because she was supposed to
10:45AM 2 be refreshing her recollection and she supposed to be secure.
10:45AM 3 Why was you having conversations with her where she was
10:45AM 4 supposed to be secured in that room?

10:45AM 5 A. I don't know what question to answer, because you asked
10:45AM 6 me several questions.

10:45AM 7 THE COURT: Did you have any contact with her,
10:45AM 8 conversation with her, about her testimony, sir?

10:45AM 9 THE WITNESS: No, sir.

10:45AM 10 BY THE DEFENDANT:

10:45AM 11 Q. Did you tell her to tell the truth?

10:45AM 12 A. I told her to speak the truth, and that's it.

10:45AM 13 Q. Why would you tell her to say -- tell the truth along --
10:45AM 14 what made you tell her to tell the truth?

10:45AM 15 A. I tell everyone that to maintain the integrity of the
10:46AM 16 case.

10:46AM 17 Q. In the middle of they testimony during a trial?

10:46AM 18 A. She was not testifying.

10:46AM 19 Q. She was -- the Judge left from the bench to refresh her
10:46AM 20 recollection. She wasn't supposed to have contact with any
10:46AM 21 agents or special agents while her testimony is going on.
10:46AM 22 But you gave her advice?

10:46AM 23 A. When she came out, I had no idea that she was on recess.
10:46AM 24 That was never conveyed to me by anyone including her.

10:46AM 25 THE DEFENDANT: You knew what was going on. Your

10:46AM 1 Honor, no further questions. This witness is -- he's
10:46AM 2 involved this case. He been involved in a lot of situations
10:46AM 3 in this case falsifying DNA reports. This witness was
10:46AM 4 talking to the witness yesterday, and she was in the middle
10:46AM 5 of her testimony, Your Honor, and this witness -- I mean,
10:46AM 6 this special agent had contact with her, Your Honor.

10:47AM 7 THE COURT: Mr. Lenihan?

10:47AM 8 THE DEFENDANT: I don't have any more questions for
10:47AM 9 this witness.

10:47AM 10 MR. LENIHAN: Redirect very briefly.

10:47AM 11

10:47AM 12 REDIRECT EXAMINATION

10:47AM 13

10:47AM 14 BY MR. LENIHAN:

10:47AM 15 Q. Special Agent Colunga, as part of helping bring a case to
10:47AM 16 trial, are you helping transport witnesses?

10:47AM 17 A. That's correct.

10:47AM 18 Q. Even if a witness -- and are you helping -- do you have
10:47AM 19 contact with witnesses when there are breaks?

10:47AM 20 A. Yes.

10:47AM 21 Q. And why do you have contact with witnesses during breaks?

10:47AM 22 A. One, if they need to go to the bathroom; two, to make
10:47AM 23 sure they're okay; three, to make sure they're not having a
10:47AM 24 nervous breakdown; four, to make sure that no one is talking
10:47AM 25 to them or tampering with them or giving them any information

10:47AM 1 or scaring them.

10:47AM 2 Q. And it's common for you to have the contact for those

10:47AM 3 reasons that you mentioned?

10:47AM 4 A. That's correct.

10:47AM 5 Q. Now, when a witness is testifying, are you allowed to ask

10:47AM 6 the witness about their testimony?

10:47AM 7 A. No.

10:47AM 8 Q. Did you ask Jessica about her testimony at all?

10:48AM 9 A. No, I did not.

10:48AM 10 Q. Is it fair to say that you are a relatively newer special

10:48AM 11 agent?

10:48AM 12 A. That is correct.

10:48AM 13 Q. Do you have much say in where you get assigned?

10:48AM 14 A. No.

10:48AM 15 MR. LENIHAN: No further questions, Your Honor.

10:48AM 16 THE DEFENDANT: I have one more question, Your Honor.

10:48AM 17 THE COURT: All right.

10:48AM 18

10:48AM 19 RECROSS-EXAMINATION

10:48AM 20

10:48AM 21 BY THE DEFENDANT:

10:48AM 22 Q. You said it's your job to escort witnesses from out

10:48AM 23 courtroom to the bathroom and stuff like that when they need

10:48AM 24 to use the bathroom?

10:48AM 25 A. Yes.

10:48AM 1 Q. Isn't that what we got marshals or officers like Bill --

10:48AM 2 I mean, court -- I mean, Officer Scott that escorted her to

10:48AM 3 the room so she could be safely in the room? This what we

10:48AM 4 have court officers for. So, wasn't you supposed to leave

10:48AM 5 that to Scott to escort her or make sure she was safe? He

10:49AM 6 already did that. So, why would you intervene?

10:49AM 7 A. I intervened because she is with me. I'm making sure

10:49AM 8 that no one tampers with her. My job is to be with her to

10:49AM 9 make sure she is okay at all times.

10:49AM 10 Q. The Court Security Guard Scott made sure she was safe

10:49AM 11 already.

10:49AM 12 A. I don't know what court security or the marshal's job is.

10:49AM 13 All I know is that I'm going to be with her 24/7 to make sure

10:49AM 14 she's okay.

10:49AM 15 Q. But you gave her advice yesterday to tell the truth,

10:49AM 16 correct?

10:49AM 17 A. I told her to tell the truth.

10:49AM 18 Q. Right. And that's all you told her?

10:49AM 19 A. We also talked about the weather, and several other

10:49AM 20 things that weren't pertinent to the case.

10:49AM 21 Q. And the rain and the snow and stuff like that?

10:49AM 22 A. Rain. Correct.

10:49AM 23 Q. Okay. But you definitely gave her advice to tell the

10:49AM 24 truth?

10:49AM 25 A. I told her tell the truth and to take deep breaths.

10:50AM 1 Q. Okay. And to say that she seen me, correct, because she
10:50AM 2 didn't say that before she left.

10:50AM 3 A. That's incorrect.

10:50AM 4 THE DEFENDANT: No further questions, Your Honor.

10:50AM 5 THE COURT: Thank you, sir. All right. As soon as
10:50AM 6 the video is ready, we'll show it in court.

10:50AM 7 MR. LENIHAN: Appreciate it.

10:50AM 8 THE COURT: Court will take a recess.

10:50AM 9 THE CLERK: All rise.

11:12AM 10 (A recess was taken from 10:50 a.m. to 11:28 a.m.)

11:28AM 11 THE CLERK: All rise. You may be seated.

11:28AM 12 THE COURT: All right. I understand that the video
11:28AM 13 has been prepared, and I guess there's four cameras out there,
11:28AM 14 and three cameras that had some visuals as to the witness
11:28AM 15 during that recess. What's the time that's in the -- what
11:28AM 16 time was this yesterday, from what time to what time?

11:28AM 17 MR. POWERS: According to the marshals, it was --

11:28AM 18 THE COURT: Yeah. What does it say on there?

11:28AM 19 MR. POWERS: It says 14:29, which is 2:29.

11:29AM 20 THE COURT: To what time?

11:29AM 21 MR. POWERS: To 2:49 is the video that is --

11:29AM 22 THE COURT: And your name is sir?

11:29AM 23 MR. POWERS: I'm William Powers, Director of IT.

11:29AM 24 THE COURT: You work for the Clerk's Office?

11:29AM 25 MR. POWERS: I do.

11:29AM 1 THE COURT: You are the technical person?

11:29AM 2 MR. POWERS: Yes.

11:29AM 3 THE COURT: Okay. I haven't seen -- I don't think
11:29AM 4 anybody has seen this except the tech people, and there were
11:29AM 5 three of them. They're altogether. Is that it?

11:29AM 6 MR. POWERS: According to the Marshal Service,
11:29AM 7 there's four cameras that are all recording at the same time.
11:29AM 8 They've provided us with all four angles, but they're separate
11:29AM 9 files. They cannot be viewed at the same time.

11:29AM 10 THE COURT: Okay. But there's three cameras that
11:29AM 11 actually show the witness during this recess?

11:29AM 12 MR. LENIHAN: Yes.

11:29AM 13 THE COURT: Okay. Let's put it on. How long is it
11:29AM 14 altogether?

11:29AM 15 MR. POWERS: Each camera is -- we've got 21 minutes
11:29AM 16 of each camera.

11:29AM 17 THE COURT: But it's all -- the whole thing is going
11:29AM 18 to be 20 minutes?

11:30AM 19 MR. POWERS: You'd have to watch all three of them.
11:30AM 20 They're all 21 minutes in length, all three of them.

11:30AM 21 THE COURT: So, it's going to be altogether --

11:30AM 22 MR. POWERS: Forty minutes if you watch the whole
11:30AM 23 thing.

11:30AM 24 THE COURT: It's going to be more than 40.

11:30AM 25 MR. POWERS: Sixty minutes.

11:30AM 1 THE COURT: All right. Let's start playing.

11:30AM 2 MR. LENIHAN: I don't think we'll have to watch the
11:30AM 3 whole first one, Judge. This is inside the courtroom.

11:30AM 4 THE COURT: Pardon me?

11:30AM 5 MR. LENIHAN: The first video is inside the
11:30AM 6 courtroom. We'll probably only have to watch three minutes of
11:30AM 7 it.

11:30AM 8 THE COURT: All right. And the rest of it -- we're
11:30AM 9 going to play it all.

11:30AM 10 THE DEFENDANT: Do we have audio?

11:30AM 11 MR. POWERS: There is no audio.

11:30AM 12 THE COURT: There's no audio.

11:31AM 13 (The recording was played.)

11:31AM 14 THE COURT: By the way, we're going to mark this
11:31AM 15 Court Exhibit 1, this video.

11:31AM 16 (Court Exhibit 1 was marked for identification.)

11:31AM 17

11:31AM 18 THE COURT: I think it's Court Exhibit 1. That's the
11:32AM 19 witness leaving the courtroom. This is like, two minutes in
11:32AM 20 the beginning of it?

11:32AM 21 MR. LENIHAN: Correct.

11:32AM 22 THE COURT: She's being escorted out by Mr. Scott.

11:32AM 23 MR. LENIHAN: And, Judge, I think this would -- she
11:32AM 24 doesn't come back into screen.

11:32AM 25 THE COURT: I'm sorry?

11:32AM 1 MR. LENIHAN: She doesn't come back into the screen
11:32AM 2 until she comes back on the witness stand when the jury is
11:32AM 3 out. Our jury comes back. I think we can go to the next
11:33AM 4 video.

11:33AM 5 THE DEFENDANT: I want to watch it.

11:33AM 6 MR. LENIHAN: This is the courtroom video?

11:33AM 7 THE COURT: Right.

11:33AM 8 MR. LENIHAN: The witness doesn't come back until
11:33AM 9 later. We could either fast forward it or go to the next --

11:33AM 10 THE COURT: Let's fast forward, because there's
11:33AM 11 nothing else going on.

11:33AM 12 MR. POWERS: Do you have an approximation of when
11:33AM 13 they come back in courtroom? No? Okay.

11:33AM 14 THE COURT: Where are we now, at 14:33?

11:33AM 15 MR. POWERS: Yes.

11:33AM 16 THE COURT: And 37 seconds. All right. We're at
11:35AM 17 14:35. I'm not on the bench, and all the parties are at the
11:35AM 18 seats. The witness is not back in courtroom. That's on the
11:35AM 19 record. We're showing -- this is the courtroom. This is one
11:35AM 20 of the four cameras?

11:35AM 21 MR. POWERS: Yes.

11:35AM 22 THE COURT: And the other three cameras are outside?

11:35AM 23 MR. POWERS: Yes.

11:40AM 24 THE COURT: Now, we're at 14:40, and the scene is
11:40AM 25 basically the courtroom. I'm still not in the courtroom, and

11:40AM 1 just watching the participants waiting to return the witness.

11:49AM 2 I notice on the video in 14:49:12, the jury is returning
11:49AM 3 to courtroom.

11:49AM 4 I notice at 14:49:45, the witness has returned to the
11:49AM 5 jury -- to the witness box. All right. That ends at 14
11:50AM 6 whatever.

11:50AM 7 THE DEFENDANT: Excuse me, Your Honor, they skipped
11:50AM 8 past the first four minutes.

11:50AM 9 THE COURT: I don't want you to say anything, okay?
11:50AM 10 We're just going to show the video.

11:50AM 11 THE DEFENDANT: It's crazy.

11:50AM 12 THE COURT: Now, we're going to -- this is the second
11:50AM 13 camera.

11:50AM 14 MR. POWERS: This is the second camera.

11:50AM 15 THE COURT: This is outside the courtroom?

11:50AM 16 MR. POWERS: I'll start it from the beginning.

11:50AM 17 THE COURT: And we're at 14:29:47. This is one of
11:51AM 18 three cameras?

11:51AM 19 MR. POWERS: Mm-hmm.

11:51AM 20 THE COURT: Again, one camera has nothing to do with
11:51AM 21 the witness. The other two do?

11:51AM 22 MR. POWERS: Yes.

11:51AM 23 THE COURT: Okay. On the screen now all it --
11:51AM 24 appears to be a number of gentleman standing in the hallway
11:51AM 25 looking out the window or engaging in conversation. I note at

11:52AM 1 14:30:25, I believe that was Mr. Scott outside the washroom,
11:52AM 2 the ladies' room. The bottom of the screen, I note there are,
11:52AM 3 I believe, members of Mr. Arrington's family or friends. I
11:53AM 4 believe it's at 14:31:35, the witness is being escorted to
11:53AM 5 another room off the lobby. At 14:33:05, the witness is being
11:55AM 6 brought back into courtroom.

11:55AM 7 MR. LENIHAN: That was Mr. Foti and his prior
11:55AM 8 assistant.

11:55AM 9 THE COURT: That's not the witness?

11:55AM 10 MR. LENIHAN: No.

11:55AM 11 THE COURT: Oh, okay. I've never seen this before.
11:55AM 12 I don't think anybody else has.

11:55AM 13 MR. LENIHAN: No. I just remember meeting Mr. Foti's
11:55AM 14 assistant yesterday.

11:55AM 15 THE COURT: Okay. At 14:37, again, there's a couple
11:59AM 16 of individuals that are standing by the window. I don't see
11:59AM 17 the witness. I'm assuming that, during this period of time,
11:59AM 18 that the witness went to the ladies' room consistent with the
11:59AM 19 testimony that I heard in court, and that the witness is
11:59AM 20 either in the ladies' room or she's sitting at the bench. The
11:59AM 21 bench is up on the wall on the left side of that picture right
11:59AM 22 behind where that American flag is located.

12:02PM 23 I note at 14:40 and one or two seconds, there's -- well,
12:02PM 24 there's two individuals at 14:40:12 standing on the left side
12:02PM 25 of the screen. I assume that's where the witness is still

12:02PM 1 sitting. That would be, according to the testimony of the FBI
12:02PM 2 agent, who escorted her into the lobby or the ladies' room.
12:06PM 3 We're at 14:44. The scene has not changed for the last few
12:06PM 4 minutes. Does this continue for how long? Do you know?
12:06PM 5 We're at -- the scene we're looking at here, we don't know?
12:06PM 6 MR. POWERS: No.
12:06PM 7 THE COURT: How long will this go on for?
12:06PM 8 MR. POWERS: There's another six minutes left in this
12:06PM 9 video.
12:06PM 10 THE COURT: Another six minutes? Okay. Then we have
12:06PM 11 one more video after this one?
12:06PM 12 MR. POWERS: Yes. I can fast forward to the scene.
12:06PM 13 THE COURT: Does the scene change at all?
12:06PM 14 MR. POWERS: I'm not --
12:06PM 15 THE COURT: This remains pretty much the same?
12:06PM 16 MR. POWERS: I haven't seen it, so I don't know.
12:06PM 17 THE COURT: Okay. All right. Well, we'll run it
12:06PM 18 then. All right. That ended at what time?
12:12PM 19 MR. POWERS: It's 14:50:13.
12:12PM 20 THE COURT: Thirteen? Okay. One more video.
12:12PM 21 MR. POWERS: Mm-hmm.
12:12PM 22 THE COURT: How long is this one?
12:12PM 23 MR. POWERS: Twenty-one minutes. The same.
12:12PM 24 THE COURT: All right. I think this should be three
12:12PM 25 exhibits. The first one will be Court Exhibit 1. The second

12:12PM 1 will be Court Exhibit 2, and this third one will be Court
12:12PM 2 Exhibit 3.

12:12PM 3 (Court Exhibits 2 and 3 were marked for identification.)

12:12PM 4

12:13PM 5 THE COURT: This is showing a view of the other end
12:13PM 6 of the lobby outside the courtroom, where the elevators are
12:13PM 7 located, which is in the video. The second video is at the
12:13PM 8 end of the lobby distances. This is more or less at the
12:13PM 9 beginning of the lobby as it goes west. On the left side,
12:13PM 10 there's windows which are showing Buffalo City Court and City
12:13PM 11 Hall of Buffalo. This is on the ninth floor for the record of
12:13PM 12 the courthouse.

12:13PM 13 And, again, we're showing at 14:30 facing west just a
12:13PM 14 number of individuals standing there by the window in the
12:14PM 15 direction of where my courtroom is located. Looking at the
12:16PM 16 video now, it looks like just a number of people standing by
12:16PM 17 the window, some with proximity to the courthouse where the
12:16PM 18 bench was, and where the ladies' washroom is. You cannot see
12:16PM 19 the witness at this point in time from the video.

12:16PM 20 MR. LENIHAN: She did walk, Your Honor, maybe 40
12:16PM 21 seconds earlier around like 14 -- or around, like, 14:32.

12:16PM 22 THE COURT: Who took a walk around?

12:16PM 23 MR. LENIHAN: The witness. We could see her come
12:16PM 24 into screen.

12:16PM 25 THE COURT: All right.

12:16PM 1 MR. LENIHAN: Then she went over to the right side of
12:16PM 2 this video, which would have been to the witness's left. And
12:16PM 3 then, this is the witness with the walker at 14:33:08.

12:17PM 4 THE COURT: You can see her on the right side of the
12:17PM 5 screen. I can see the walker. I can see the witness.

12:17PM 6 MR. LENIHAN: She's walking, Your Honor, towards the
12:17PM 7 ladies' bathroom. Your Honor, now at 14:56:12, you see the
12:20PM 8 witness coming out of the area of the female bathroom with the
12:20PM 9 walker.

12:20PM 10 THE COURT: And that's it?

12:20PM 11 THE DEFENDANT: She was escorted with Colunga the
12:20PM 12 whole time. He was over there with her the whole time, Your
12:20PM 13 Honor. That's what they leaving out. They filmed --
12:20PM 14 realized -- he -- Colunga was over there with her the whole
12:20PM 15 time. He escorted her over there and was over there the whole
12:20PM 16 time off camera.

12:25PM 17 THE COURT: I note that at 14:41:30 and whatever
12:25PM 18 there hasn't been anybody in the video, and at 14:41:37
12:25PM 19 someone did appear to be walking toward the elevators. When
12:28PM 20 does this video end at, what time?

12:28PM 21 MR. POWERS: Right now?

12:28PM 22 THE COURT: No, when does it end? Is it 14:40?

12:28PM 23 MR. POWERS: It ends in five and a half minutes. So
12:28PM 24 it will be 14:50, 14:51.

12:28PM 25 THE COURT: Fifty-one?

12:28PM 1 MR. POWERS: I think at 14:50 it will end.

12:33PM 2 THE COURT: At 14:50:14. All right. That concludes
12:34PM 3 it. All right. That, I think, pretty much concludes this
12:34PM 4 hearing. Thank you, sir. We're going to have to have those
12:34PM 5 three videos as Court Exhibit 1, 2, and 3, as I earlier
12:34PM 6 indicated. All right. Anything further for today?

12:34PM 7 MR. LENIHAN: No, Your Honor.

12:34PM 8 THE DEFENDANT: You want me to put something in
12:34PM 9 writing, Your Honor?

12:34PM 10 THE COURT: No. I want it right now. This is it.

12:34PM 11 THE DEFENDANT: Your Honor, the camera speaks for
12:34PM 12 itself, Your Honor. When she got escorted out of here without
12:35PM 13 your permission, as a testifying witness that was -- you gave
12:35PM 14 her ten minutes to refresh her recollection. The government
12:35PM 15 had her removed to an unsecure location. And as you can see,
12:35PM 16 in Exhibit 3, that when she come out, and she being escorted
12:35PM 17 down the hall, you see Special Agent Colunga come from the
12:35PM 18 window, goes over to this blind spot, and was over there with
12:35PM 19 her talking to her for the whole 20-something minutes off
12:35PM 20 camera.

12:35PM 21 If you do the readback on her testimony, before she left
12:35PM 22 out of here, Your Honor, she was hostile with the government.
12:35PM 23 She was refusing to identify me. She was -- she didn't
12:35PM 24 identify me. And the whole time she's over there talking to
12:36PM 25 Special Agent Colunga, she comes in and says -- blurting out

12:36PM 1 stuff, saying stuff, you know, that I wasn't even questioning
12:36PM 2 her about, and changes her story and starts screaming out that
12:36PM 3 I know what I did. You know what you did. And I'm like, what
12:36PM 4 are you talking about? What's going on? I'm not even asking
12:36PM 5 you a question. She start blurting out, you killed him, you
12:36PM 6 know what you did.

12:36PM 7 And I'm moving for a mistrial with prejudice, Your Honor,
12:36PM 8 because whatever Colunga told her to come here and say, she
12:36PM 9 said it, and the jury's heard that, and you can never take
12:36PM 10 that from the jury's minds. And it's not fair. It's unfair.
12:36PM 11 And they took it upon they self when they seen a situation
12:36PM 12 going left, and it's going out of -- whatever they thought
12:36PM 13 that she was going to testify to.

12:36PM 14 But as I'm here going to trial, Your Honor, saying I'm
12:36PM 15 innocent, I didn't commit this crime, and for the testimony to
12:37PM 16 go totally different for the government, and she's not
12:37PM 17 cooperating with the government, and she's saying that she
12:37PM 18 never seen me, and she never seen my face, and then come in
12:37PM 19 here and changes her story, Your Honor, because a special
12:37PM 20 agent that's been constantly involved in this case raiding my
12:37PM 21 cell, seizing my materials, my materials coming up missing,
12:37PM 22 he's going by my alibi witness's house trying to get them to
12:37PM 23 tell them what she going to testify to, he's constantly,
12:37PM 24 constantly, reappearing in this case, Your Honor, doing foul
12:37PM 25 things.

12:37PM 1 And when that witness was on the bench during her
12:37PM 2 examination testimony, the government calls her out so the
12:37PM 3 agents can have they way with her, and it's not fair. And you
12:37PM 4 can never erase what she said out of the jury's minds, Your
12:37PM 5 Honor.

12:38PM 6 During trial, I'm sitting here during trial. This is a
12:38PM 7 witness that was with the deceased or the person that got
12:38PM 8 killed, Your Honor. She never identified me, Your Honor. And
12:38PM 9 the government seen it wasn't going their way, and they took
12:38PM 10 this recess, and without you being on the bench, they took it
12:38PM 11 upon they selves to get her outside to change her story and
12:38PM 12 I'm moving this Court for a mistrial with prejudice, Your
12:38PM 13 Honor.

12:38PM 14 THE COURT: Mr. Lenihan?

12:38PM 15 MR. LENIHAN: A couple points, Your Honor. As the
12:38PM 16 testimony bore out from Court Security Officer Scott, the
12:38PM 17 government didn't make the determination to ask
12:38PM 18 Ms. Kazukiewicz to leave the witness stand. It was made in
12:38PM 19 the moment for her security to calm down a situation that
12:38PM 20 occurred in this courtroom. And the video bears that out.

12:38PM 21 The video also corroborates Special Agent Colunga's
12:39PM 22 testimony that he was with her, but he testified credibly that
12:39PM 23 he never told her to say anything, to identify the defendant;
12:39PM 24 that all he told to her was to calm down a little bit and just
12:39PM 25 tell the truth. The witness herself corroborates all of this.

12:39PM 1 The defendant asked the witness, did the government tell you
12:39PM 2 anything, and her answer was, why would they tell me? They
12:39PM 3 didn't tell me anything. Her testimony was that no one from
12:39PM 4 the government told her what to say and to identify the
12:39PM 5 defendant. The defendant choose to cross-examine her, and she
12:39PM 6 testified as to how she testified.

12:39PM 7 There's -- we never asked for an in-court identification.
12:39PM 8 We had briefed this issue. The Court had precluded the in-
12:39PM 9 court identification at the first trial due to that Facebook
12:39PM 10 photograph that was shown to her prior to her Grand Jury
12:39PM 11 testimony.

12:39PM 12 So, when we made our representation over the weekend as to
12:40PM 13 seeking her identification evidence, it was purely for the
12:40PM 14 photo arrays; the two photo arrays where she said, on the one,
12:40PM 15 she'd have to see Mr. Arrington in person, and on the other,
12:40PM 16 she said she was 45 percent sure, but would have to see him in
12:40PM 17 person.

12:40PM 18 And Mr. Arrington started asking her about what would
12:40PM 19 happen if she saw him in person and the answer was something
12:40PM 20 that he really didn't like. There's no evidence of misconduct
12:40PM 21 whatsoever, pure speculation, pure conspiracy theory. We'd
12:40PM 22 ask the Court to deny the defendant's application.

12:40PM 23 THE DEFENDANT: Your Honor, can I say something?

12:40PM 24 THE COURT: Yes.

12:40PM 25 THE DEFENDANT: The video speak for itself, Your

12:40PM 1 Honor. Colunga didn't have no right to be telling her what
12:40PM 2 to -- testimony or giving her advice of what her testimony
12:40PM 3 should say. He's an experienced special agent. He know the
12:40PM 4 rules of this courtroom and what he should and should not do.

12:40PM 5 Your Honor, he specifically came in here -- first and
12:41PM 6 foremost, AUSA Lenihan lied to you when you asked him about
12:41PM 7 her being secured in this room. He said nobody had access to
12:41PM 8 her. She was in the room the whole time. Once he found out
12:41PM 9 the cameras was coming about, his story totally changed, Your
12:41PM 10 Honor.

12:41PM 11 MR. LENIHAN: Judge, I mean, on that point, I have to
12:41PM 12 rely on --

12:41PM 13 THE DEFENDANT: I was still -- not finished. I
12:41PM 14 wasn't finished talking. I gave you your piece, give me my
12:41PM 15 piece, please.

12:41PM 16 When the Judge asked you, you told the Judge that she was
12:41PM 17 in a secure place. Nobody had access to her. Nobody went in
12:41PM 18 the room with her. Once you found out that cameras was
12:41PM 19 involved and the Judge was getting his camera in, your
12:41PM 20 testimony changed twice. First you said the female special
12:41PM 21 agent, and then, oh, one more.

12:41PM 22 Colunga had direct contact with this lady in the corner
12:41PM 23 off the camera in a blind spot sitting there with her for 20
12:42PM 24 minutes talking to her, giving her advice on what to testify
12:42PM 25 to. We couldn't hear what they were saying, but what -- her

12:42PM 1 actions when she came back in here tells the story of what
12:42PM 2 took place. And it was definitely misconduct being committed,
12:42PM 3 Your Honor. So, I'm asking this Court --

12:42PM 4 MR. LENIHAN: Judge, on that point, I wasn't present.
12:42PM 5 I have to rely on what's told to me. I was relying on the
12:42PM 6 fact that there was no contact. It was a fact-finding mission
12:42PM 7 this morning. As we developed more facts and we talked to
12:42PM 8 more people, we learned that Special Agent Colunga did, in
12:42PM 9 fact, escort her to the bathroom. And then, as Special Agent
12:42PM 10 Colunga sat down on the bench, when I made that
12:42PM 11 representation, I didn't know that it was evolving this
12:42PM 12 morning. I'm doing the best I can to give the Court the
12:42PM 13 information as to what I knew at the time.

12:42PM 14 THE DEFENDANT: Your Honor, he knew it was special --

12:42PM 15 THE COURT: All right. No, no. No more talking.
12:42PM 16 I've heard enough. I've seen the evidence. I'll render a
12:42PM 17 decision tomorrow morning at 10 o'clock. All right. We'll
12:43PM 18 recess for the day.

12:43PM 19 (Proceedings concluded at 12:43 p.m.)
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I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Official Court Reporter